IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1031 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARGAR PARVATGAR GOSAI

Versus

DAXABEN WD/O RAJENDRAKUMAR JAMNADAS MODI

Appearance:

MR SB VAKIL for the appellants.

MR DR BHATT for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE H.R.SHELAT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 04/04/2000

ORAL JUDGEMENT : (Per: H.R. Shelat, J.)

Being aggrieved by the judgment and award dated

17th March 1987 passed by the then learned Chairman of the Motor Accident Claims Tribunal (Aux.) at Narol, in M.A.C.P. No. 728 of 1984 on his file, awarding the compensation of Rs. 4,46,200/- together with running interest at the rate of 12% p.a., from the date of the petition till payment and also the costs in proportion, the original-opponents have preferred this appeal.

2. In order to appreciate the rival contentions, necessary facts may be stated. Rajendrakumar Jamnadas Modi and Rasiklal Manjibhai had gone to Dakor on 9th September 1984 riding over the scooter. On the next day, i.e. on 10th September 1984 both were returning. Rajendrakumar Jamnadas was driving the scooter while Rasikbhai Manjibhai was the pillion-rider. They had left Dakor early in the morning around 7.00 A.M. Around 9.00 or 9.30 A.M. they reached near Shastrinagar Bridge on Narol-Sarkhej Road. They were negotiating the bridge and had crossed major portion of the bridge. They had to cross about 15 feet distance in order to pass along the bridge. At that time one truck driven by the appellant No.1 came from the opposite direction. The same was driven at the hectic speed and on the wrong side. The truck collided against the scooter, as a result Rajendrabhai Jamnadas and Rasiklal Manjibhai were thrown off the scooter and unfortunately the front wheel of the truck ran over the person of Rajendrabhai Jamnadas. He succumbed to the injuries he sustained at the spot. Rasiklal Manjibhai luckily survived but he also sustained injuries. The heirs and legal representatives of Rajendrabhai Jamnadas then filed M.A.C.P. No. 728 of 1984 in the Tribunal. The learned Chairman of the Tribunal, hearing the parties, passed the award as aforesaid. Feeling aggrieved by the judgment and award, the opponents, who are the driver, owner, and insurer of the truck, have filed this appeal.

3. Mr. Kapadia, the learned advocate, who appeared on behalf of the appellant, while assailing the award, submits that he would like to confine his arguments only on two points, namely (1) negligence; and (2) multiplier adopted by the Tribunal. According to him, the learned Chairman of the Tribunal fell into error in holding that the accident happened because of the sole negligence on the part of the appellant No.1 the truck driver. The learned Chairman of the Tribunal has overlooked the fact that the incident happened on the middle of the road and that fact is sufficient to attribute negligence to a little extent to the deceased who was driving the scooter.

4. Considering the evidence on record, we cannot put

a seal of approval on the contention raised by Mr. Kapadia, the learned advocate representing the appellant. The tar road in question is straight at that place. The total width of the road is 26 feet as mentioned in the Panchnama Ex. 54. Rajendrabhai who was driving the scooter was proceeding towards north, while the truck coming from opposite side was proceeding towards south. Hence the correct side of deceased Rajendrabhai was the western half of the road, while the correct side of the truck driver was the eastern half of the road. As mentioned in the Panchnama Ex. 54, the impact point was 14 feet away from the eastern border of the bridge as the incident happened on the bridge itself and about 11.6 feet away from the western border of the bridge. It, therefore, follows considering the total width being 26 feet that the incident happened about 3 feet away towards west from the middle line of the road dividing the left and right sides. The impact point is, therefore, on the western half of the road which was the correct side of the deceased Rajendrabhai. This shows that the appellant No.1 the truck driver had swerved on the wrong side to the extent of 2 1/2 to 3 feet, as a result the incident happened. Ordinarily a driver of the vehicle is under an obligation to drive his vehicle remaining within his correct side, namely the left side. If he proceeds on the wrong side and if no risk is involved, it would not amount to negligence, but if the risk is involved, a duty to take care arises and that duty is not to cross the correct side. If at all it was necessary to cross the correct side and proceed on the wrong side, it is for him to explain what was the reason which compelled him to proceed on the wrong side and despite the care expected of him having been taken, the incident happened. In the absence of any explanation, negligence can be attributed to him. In this case, the appellant No.1 has not stepped in the witness box to state the manner in which the incident happened. He has not preferred to even explain why he was required to go on the wrong side even to a little extent though the width of his correct side was sufficient to pass through safely and conveniently. When he has not explained, prima facie, negligence can be attributed to him, but we find the evidence on record to attribute negligence to appellant No.1. Rasikbhai Manjibhai, who was the pillion-rider and who is also the victim of the motor accident figured at Ex.28 before the Tribunal. He has stated the manner in which the incident has happened. From his evidence, what is made clear is that Rajendrabhai remaining on his correct side was driving the scooter at the moderate speed, namely 20 to 25 Kms. per hour, but the appellant No.1 who was driving the truck came from the opposite direction and that too

on the wrong side and hit the scooter. The appellant No.1 went on the wrong side because he wanted to overtake the tempo proceeding ahead of him. It appears, therefore, the incident happened because the appellant No.1 was overtaking the tempo proceeding ahead of him and for the purpose of overtaking he had gone to the wrong side to the extent necessary. What is the duty of the driver who desires to overtake the vehicle proceeding ahead of him is the point that arises for consideration.

5. If the driver desires to overtake the vehicle proceeding ahead of him, he must first send a message to the driver of the vehicle proceeding ahead of him by any mechanical device available and then he must wait for the signal from the driver of the vehicle proceeding ahead of him. After the signal is received, he can proceed to overtake, but he must bear in mind the speed of the vehicle being overtaken and his speed and also the width of the road. He must also see that the space available on his right side is sufficient so as to proceed safely and conveniently. Even the said space for the purpose of convenient and safe passage is available, he has also to bear in mind that no vehicle is approaching from the opposite direction or there is no other obstruction in his way. If he finds that a vehicle is approaching from the opposite direction and the distance between his vehicle and the vehicle approaching is too short to overtake, he must desist from overtaking the vehicle proceeding ahead of him. It is also his duty while overtaking to see that he maintains reasonable distance between his vehicle and the vehicle being overtaken so as to avoid brushing and grazing.

6. In the case on hand, what transpires from the evidence of Rasikbhai Manjibhai at Ex.28 is that though the scooter was approaching, the appellant No.1 preferred to overtake the tempo proceeding ahead of him, as a result of which both the vehicles collided. This shows that the distance between the scooter and the truck driven by appellant No.1 was too short to overtake safely. However, the appellant No.1 disregarding his such duty not to overtake, he preferred to overtake thinking that he would be able to control the situation that might emerge on the road, but his judgment did not come true and truck collided, and this amounts to negligence and rashness. On the other hand, the scooter driver, Rajendrabhai Jamnadas was driving the scooter remaining on his correct side and that too keeping the distance of 3 feet from the middle line of the road. He was driving the scooter taking every care which he was expected of. He therefore cannot be blamed for being

negligent even to a little extent. Of course, it is the contention of Mr. Kapadia, the learned advocate representing the appellant that seeing the truck coming from the opposite direction the deceased ought to have averted the accident swerving more and more on his left side but he did not do so. He can well be held to be contributory negligent for the accident. We are unable to accept the contention, in the absence of necessary evidence. There is no evidence on record to hold that the time gap was sufficient to move on the left side. On the contrary, it appears that the truck came so suddenly on the road from the downward level in to the bridge that the deceased had perhaps no time to move on his left side, as contended. The deceased, therefore, cannot be blamed for contributory negligence. The Tribunal in view of such facts was perfectly right in holding the appellant No.1 to be solely responsible for the accident.

7. At this stage, Mr. Kapadia contends that initially while lodging the FIR, the case about overtaking was not at all putforth but Rasiklal Manjibhai came forward with that case at the time of hearing. When accordingly improvement is made regarding the manner in which the incident happened, it is the circumstance on record which would justify the Court in attributing the negligence to the deceased driving the scooter. It may be stated that FIR is not considered to be the encyclopaedia and every minute details are not to be stated. If the police has not recorded or Rasiklal has not stated the case in detail while lodging the complaint, it would not be a ground to attribute negligence to deceased Rajendrabhai. It may however be mentioned that for such omission Rasiklal Manjibhai has come forward with the explanation while giving evidence before the Tribunal. According to him, immediately after the accident, he was frightened and because of the aghast he while lodging the complaint immediately after the incident forgot to state in details the manner in which the incident happened. His such explanation is quite plausible, and is not shaken by the other side putting further questions while cross-examining him. In view of such facts, if the detailed account or the graphical account of the manner in which the incident happened is not given in the FIR, the case advanced by the claimant in details at the time of hearing cannot be condemned as concocted after suitable improvement and on that count Tribunal cannot attribute the negligence even to a slightest extent to the victim. In this case, therefore, we find no reason to disturb the finding of the Tribunal qua negligence.

8. The Tribunal, while awarding the compensation, has adopted the multiplier of 18 which according to Mr. Kapadia, the learned advocate for the appellant is on a higher side. The Tribunal ought to have adopted the multiplier even less than 15. The deceased was aged 40 years at the time of accident. He was serving in the bank and would have served the bank till the age of his superannuation. The age of superannuation was 58 years. He would have, therefore, served the bank for about 18 years more. If we take Schedule II under Section 163-A to be a guide, the reasonable multiplier comes to 16. In that case, one would be inclined to hold that the multiplier adopted is little bit on a higher side. However, we do not find any good cause to interfere with the multiplier adopted by the Tribunal. The difference is small one, and in view of the decision of this Court in the case of Dy. Collector, Land Acquisition, Dharoi Canal Project Vs. Human Savdi Rahim Khalli - 39(3) G.L.R. 2356, the Court must abstain from interfering with the decision of the lower Court, if the difference is small or stake is small. In view of such decision, in the case on hand, we do not think it necessary to interfere with the multiplier adopted. On no other ground the award is assailed.

9. For the aforesaid reasons, the award passed is required to be maintained. The appeal in the result is liable to be dismissed and is dismissed accordingly.
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